

REMARKS

Claims 8 to 23 are currently pending and being considered.

Reconsideration is respectfully requested based on the following.

It is noted that essentially corresponding claims (as previously presented) have been allowed in the corresponding European application. Furthermore, Examiner Blair spoke with Aaron C. Deditch (Reg. No. 33,865) on December 9, 2008, and advised that claims 20 to 23 (and any appropriate dependent claims) contained allowable subject matter.

Claims 8 to 23 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 7,152,094 (the “Jannu” reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *See KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

While the rejections may not be agreed with, claims 8 and 14 have been rewritten to provide that device includes bus-specific receiving objects configured to one of (1) relay incoming messages to selected software gateways, and (2) monitor access to a particular bus, for each subnet, and wherein the bus-specific receiving objects are provided for each subnet.

As further regards claims 8 and 14, they each include the feature of bus-specific receiving objects configured to one of (1) relay incoming messages to selected software gateways, and (2) monitor access to a particular bus, for each subnet, and wherein the bus-specific receiving objects are provided for each subnet. The Jannu reference does not disclose nor suggest this feature. Indeed, the Final Office Action has not even addressed these specific features. For these additional reason claims 8 and 14 are allowable. The dependent claims have been rewritten as necessary to conform to claims 8 and 14, as presented.

Still further claim 8, as presented, is to a device for connecting subnets in a vehicle, including “a gateway unit configured to connect at least two subsystems,” in which the “gateway unit is made of at least one modular software gateway, which routes messages between only two subnets in a vehicle.”

The Final Office Action cites Figure 1 and column 1, lines 38 to 58, of the Jannu reference as to claim 8. In particular, it is conclusorily asserted that “connection 101-115 is considered a modular software gateway.” It is respectfully submitted that nothing in Jannu discloses (or even suggests) a modular software gateway, as provided for in the context of the presently claimed subject matter. The specification of the present application specifically states that a modular software gateway provides for “expand[ing] gateways *without need for changing the existing gateway software and/or the existing configuration tables.*” The present application further discloses that “[a]dding or omitting such a modular gateway when changing the network topology avoids such changes.” (Specification, page 1, lines 29, (emphasis added)).

In stark contrast, the Jannu reference states the following:

[I]f each type of technology uses its own data format, a *specifically designed adapter* is needed between each pair to allow communication between the two.... [T]he point-to-point approach creates vendor dependency. The adapters between platforms must meet the requirements of the manufacturers of each system. ***If a piece of equipment is replaced, the adapters between the new equipment and all other systems must be redesigned.***

(Jannu, col. 1, lines 51 to 58 (emphasis added)).

Thus, even if it is assumed (for purposes of this response) that elements 101 to 115 of the Jannu reference are gateways, as conclusorily asserted by the Final Office Action, the Jannu reference makes plain that it is not a “modular software gateway,” let alone one that is

“connecting subnets in a vehicle,” as provided for in the context of the claimed subject matter. In Jannu, the “adapters between the new equipment” are not modular but “must be redesigned.” Thus, there is no reasonable interpretation that supports the assertion that the cited section of Jannu discloses a “modular software gateway” as in claim 8. This is because Jannu specifically teaches that its system is not modular.

In the Response to Arguments section, the Office seems to suggest that Applicant’s are “confused” and even offers to clarify that the “claimed ‘module software gateway’ is the same thing as the [A]pplicant’s disclosed ‘logical software gateway’” (Final Office Action, page 2). It is respectfully submitted that the issue is not whether the “module software gateway” of the claimed subject matter is the same as what is in the present specification, but whether the Office has met its burden of presenting a *prima facie* case of obviousness by relying on the Jannu reference.

The Jannu reference does not describe, nor even suggest, the features as provided for in the context of the claimed subject matter. Although the Final Office Action conclusorily asserts that “Jannu works the same way” (Final Office Action, page 3) it is merely relying on conclusory statements. In this regard, the Supreme Court has made clear that “rejections on *obviousness cannot be sustained by mere conclusory statements*; instead, there must be some articulated reasoning with *some rational underpinning* to support the legal conclusion of obviousness.” (See *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1396 (2007)). In contrast to the Supreme Court’s stated guidelines, the Office clearly has not provided any “articulated reasoning with *some rational underpinning* to support the legal conclusion of obviousness;” instead, the Office is relying on “mere conclusory statements.”

The Office’s arguments are essentially that “Jannu works the same way” and that “[A]pplicant is taking the words ‘all other systems must be redesigned’ out of context.” However, these assertions are belied by the fact that the section relied upon by the Final Office Action makes absolutely clear that “[i]f a piece of equipment is replaced, the adapters between the new equipment and all other systems must be redesigned.” (Jannu, col. 1, lines 51 to 58 (emphasis added)). Prior art references must be considered as a whole, including portions that teach away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Accordingly, since there is no reasonable interpretation that supports the assertion that the cited section of Jannu discloses a “modular software gateway” as in claim 8, the Office has not met its burden of presenting a *prima facie* case of obviousness.

Accordingly, claim 8, as presented, is allowable, as are its dependent claims 9 to 13, 22, and 23.

Claim 14, as presented, includes features like those of claim 8, including the feature of a “gateway unit configured to connect at least two subsystems, the gateway unit being integrated in a control unit having an application system and being provided in one layer of a communication system of the vehicle, the gateway unit including at least one modular logical gateway, the logical gateway connecting only the at least two subsystems in the vehicle, the subsystems being subnets.”

Claim 14, as presented, is therefore allowable for essentially the same reasons as claim 8, as are its dependent claims 15 to 21.

As further regards claim 20, it includes the feature of “bus-specific receiving objects configured to relay incoming messages to selected software gateways.” The Jannu reference does not disclose nor suggest this feature. Indeed, the Final Office Action has not even addressed this feature. For this additional reason claim 20 is also allowable. Still further, claim 20 includes the feature in which “the receiving objects include routing tables in which a treatment of incoming messages is configured.” The Jannu reference does not disclose nor suggest this feature. The Final Office Action has not addressed this feature. For this additional reason claim 20 is allowable.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 8 to 23 are allowable.

CONCLUSION

In view of the foregoing, all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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Dated: 7/1/2009

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